

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

To: Magalie Roman Salas, Secretary
for direction to
The Honorable Richard L. Sippel
Administrative Law Judge

REQUEST FOR PERMISSION TO FILE APPEAL

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SUMMARY

The Presiding Judge's denial (set out in *Memorandum Opinion and Order*, FCC 99M-85, released December 21, 1999) of the Motion to Enlarge filed by Adams Communications Corporation ("Adams"), is based on an incomplete and inaccurate understanding of the underlying facts. This is in large measure, if not totally, the result of the fact that those underlying facts were made available by Reading Broadcasting, Inc. ("RBI") in a dilatory, staggered and misleading manner. That, in turn, forced Adams to present the available information in a piecemeal fashion as the information became available to Adams.

When all the now-available evidence is considered, it is clear that an unauthorized transfer of control of RBI was consciously undertaken by RBI in October, 1991, and that RBI thereafter went to extensive lengths to withhold that information from the Commission.

Most of that evidence, however, was not available at the time that the Enforcement Bureau filed its Opposition to Adams's Motion, because RBI had not made it available. Since the *MO&O* appears to be based to a significant degree on the Bureau's stated position, the fact that that position was not formulated after review of all available information undermines the soundness of that decision.

In light of these considerations, Adams should be permitted to appeal the *MO&O* now, rather than wait months or years for the opportunity to bring RBI's misconduct to the Commission's attention. Alternatively, the Presiding Judge may prefer simply to modify his decision for the reasons set forth herein.

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1. Pursuant to Section 1.301 of the Commission's Rules, Adams Communications Corporation ("Adams") requests permission to appeal the ruling set forth in *Memorandum Opinion and Order*, FCC 99M-85, released December 21, 1999 ("*MO&O*"), in which the Presiding Judge denied Adams's motion ("Motion to Enlarge") seeking the addition of two qualifying issues relative to Reading Broadcasting, Inc. ("RBI").

2. Section 1.301 requires that the requesting party demonstrate that the ruling to be appealed is such that error would be likely to require remand should the appeal be deferred and raised as an exception. Here, Adams sought the addition of two issues relating to the basic qualifications of RBI. If the Presiding Judge's denial of Adams's Motion to Enlarge were to be successfully raised in exceptions, remand and further hearing -- concerning the added issues -- would clearly be necessary.

3. Section 1.301 also requires that the requesting party demonstrate that a new or novel question of law or policy is presented.

4. Here, the Presiding Judge's *MO&O* is based on an incomplete and inaccurate understanding of the underlying facts. It is also based at least in part on the position taken by the Enforcement Bureau ("Bureau") which, when it articulated that position, had not had the opportunity to review all the documentary materials which ultimately became available. The problems apparent in the *MO&O* (and the Bureau's antecedent Opposition) arose from RBI's dilatory, staggered and misleading delivery of information to Adams and the Court. RBI declined to offer a full and forthright showing about its ownership and/or the facts and circumstances surrounding certain corporate developments in 1991-1992, and instead provided only piecemeal information in various pleadings. As a result, Adams was confronted, over the course of its initial Motion to Enlarge, its reply, a supplement, and a

reply to RBI's opposition to the submission of that supplement, with a series of moving evidentiary targets.

5. Under these circumstances, the possibility of confusion or misunderstanding of the available (or unavailable) evidence was rife.^{1/} These circumstances, created by RBI's self-servingly selective approach to the disclosure of information within its control, should not be permitted to shelter RBI from the consequences of the now-available evidence.

FACTUAL BACKGROUND

6. While Adams is still not confident that the whole story concerning the ownership and control of RBI during the period 1991-1992 has yet emerged (since as of this date, all of the RBI minutes have not been made available), the information which we do have establishes the following chronology.

A. June, 1989-August, 1991 -- Parker arrives at RBI; the MSA is implemented.

7. In June, 1989, RBI entered into a "Management Services Agreement" ("MSA") with Micheal Parker and his wholly-owned company, Partel, Inc. ("Partel"). See Exhibit D to RBI's Opposition to Adams's Motion to Enlarge. This was less than a year after Parker had *twice* been found to have engaged in fraud and/or deceit before the Commission. *Religious Broadcasting Network*, 3 FCC Rcd 4085 (Rev. Bd., July 5, 1988); *Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 (August 5, 1988). Those recent stains on his record were not mentioned in a Disclosure Statement filed in connection with RBI's

^{1/} In the Bureau's case, that possibility was a certainty, since the Bureau's only observations about Adams's allegations were made shortly after Adams's Motion to Enlarge was filed, and before RBI chose to disclose in dribs and drabs various pieces of additional evidence which strengthened Adams's arguments.

then-pending bankruptcy, *see* Attachment A, which suggests that Parker chose not to disclose these matters to RBI.

8. The MSA contained provisions relating to possible future ownership of RBI stock by Partel, and also provided that Parker would be an RBI officer and director. The MSA also granted Parker/Partel authority to make personnel decisions at Station WTVE(TV), and it gave Parker/Partel a "veto" over all any and all RBI expenses. *See, e.g.,* RBI Opposition to Adams Motion to Enlarge (filed November 19, 1999), Exhibit Y, p. 3; Exhibit X, p. 86. The MSA thus effectively transferred control of Station WTVE(TV) from RBI to Parker/Partel. *See, e.g., Siete Grande Television, Inc.,* 11 FCC Rcd 21154, 21156 (Mass Media Bureau 1996).

9. The MSA was approved by RBI's shareholders and directors in August-September, 1989. While the MSA included a provision requiring approval by the Bankruptcy Court, Parker and Partel deemed the MSA to be in full force and effect no later than August, 1989. At that time, Parker was elected an officer and director of RBI, and Partel/Parker undertook management of Station WTVE(TV) pursuant to the MSA.^{2/}

^{2/} RBI has asserted that because the MSA was subject to approval by the Bankruptcy Court, the MSA should not be deemed to have been in place until the Bankruptcy Court approved it and, therefore, RBI was under no obligation to disclose the MSA to the Commission prior to such Court approval. The *MO&O* appears to subscribe to this notion as well. *See MO&O* at 3, ¶6. But it is clear that, from August, 1989 forward, RBI, Parker and Partel viewed the MSA to be in full force and effect, whether or not the Court had approved it. If they effectuated the agreement without such approval in 1989-1991, how could they legitimately claim that the agreement really wasn't in place during that period?

Moreover, Bankruptcy Court approval of the MSA was obtained in **August, 1990** (**NOT** 1989, as Paragraph 4 of the *MO&O* indicates, or June, 1991, as Paragraph 5 of the *MO&O* indicates). *See* Attachment B. But RBI failed to disclose the MSA for years after that approval, despite the fact that it was required to do so in, *e.g.,* Annual Ownership Reports filed in 1991, 1992 and 1993.

B. The RBI Bankruptcy Plan of Reorganization

10. RBI had been in bankruptcy since 1986. In 1990, RBI submitted to the Bankruptcy Court a plan of reorganization. That plan was approved, or "confirmed", by the Court on January 10, 1991; the Court's confirmation order became final and nonappealable on January 20, 1991. A copy of the plan is included as Attachment C.^{3/} The plan was initially supposed to be implemented within 90 days thereafter. *See* Attachment C.

11. But instead of implementing the plan as scheduled, RBI submitted repeated "modifications" of the plan, each extending the "Effective Date of the Plan" and thereby extending the date of consummation of the plan. None of the "modifications" "materially or adversely affect[ed]" any interests protected by the Bankruptcy Court, according to the Court, and each such modification was routinely and promptly approved by the Court. The sixth and final such "modification" was submitted to the Bankruptcy Court on August 5, 1991, although it was amended in September, 1991.

C. The August, 1991, 316

12. On August 14, 1991, RBI submitted a Short Form Assignment Application ("August, 1991, 316") seeking approval of the ownership changes which would result from implementation of the plan of reorganization. In the August, 1991, 316, RBI expressly asserted that the proposed changes would **NOT** result in any actual transfer of control of RBI, since "stockholders of [RBI] prior to bankruptcy will continue to own more than 50

^{3/} It is not clear from the *MO&O* whether the Presiding Judge believes that some further approval from the Bankruptcy Court was necessary. Adams understands that, with the Bankruptcy Court's January, 1991, approval, RBI had all it needed from that forum to complete its reorganization. While RBI technically remained subject to the Bankruptcy Court's jurisdiction, no further approvals from the Bankruptcy Court were necessary (other than routine approvals of seemingly minor "modifications" to the plan of reorganization).

percent (50%) of [RBI]'s stock after the grant of the present application." RBI went so far as to provide a chart comparing the before-and-after holdings of RBI's previously-approved shareholders. According to that chart, the following previously-approved RBI shareholders would continue to hold more than 50% of RBI's stock and would, therefore, continue to wield corporate control:

<u>Name of Shareholder</u>	<u>Percentage Interest Held</u>	
	<u>Before 316</u>	<u>After 316</u>
Henry N. Aurandt	36%	18.71 %
Robert A. Denby	10%	4.99%
Sergio Proserpi	4%	3.01 %
Jack A. Linton and Nancy A. Linton	2%	0.86 %
Irvin Cohen	8%	3.02 %
Roger N. Longenecker and L. Carole Longenecker	5%	3.86 %
Ralph H. Tietbohl	5%	3.68 %
Patricia J. Verbinski	5%	4.02 %
Robert H. Clymer	4%	1.49 %
Larry A. Rotenberg and Allison A. Rotenberg	4%	1.26 %
David E. Mann and Barbara W. Mann	3%	2.5 %
Joanne V. Davis	3%	0.88 %
Albert R. Boscov	2%	0.81 %
John R. Bower, Jr. and Jill L. Bower	2%	2.01 %
Edward C. Fischer	2%	3.04 %
Bernard R. Gerber	2%	0.86 %
Catherine Z. Morrow	2%	1.34 %
Donald E. Stoudt and Mary Lu Stoudt	1%	0.34 %
<u>TOTAL</u>	<u>100%</u>	<u>56.68%</u>

13. The August, 1991, 316 was granted in August, 1991, but never

consummated. ^{4/}

D. The September, 1991, Meetings; the MSA is terminated and the plan of reorganization nullified by the RBI Board of Directors.

14. In September, 1991, meetings of RBI's shareholders and Board of Directors were held. *To date RBI has NOT produced any minutes of those meetings.* Nevertheless, other documents produced by RBI indicate that, at those meetings, one of RBI's five directors was replaced, and the resulting board -- consisting of Henry Aurandt, Helen Aurandt, Jack Linton, Robert Clymer, and Parker, *see* Attachment D -- terminated the MSA and declared the plan of reorganization to be null and void. While Parker apparently disputed the validity of the election of Mrs. Aurandt and the actions which were taken by the board at that meeting, RBI has made no showing that the September, 1991 meetings were invalid in any respect. ^{5/}

E. The October, 1991 Issuance of Stock by Parker

15. Following the September, 1991, termination of the MSA, Parker refused to go away quietly. Instead, on October 15, 1991, Parker took it upon himself to issue more than 360,000 shares of RBI stock, supposedly pursuant to the plan of reorganization which had been declared null and void by the RBI directors in September, 1991. This issuance of

^{4/} The *MO&O* indicates that a short form transfer application was "submitted and accepted by the Commission in November 1991". *MO&O* at 3, ¶5. That is not accurate, as the *MO&O* itself makes clear (at 4, ¶7).

^{5/} In its Opposition to Adams's Motion to Enlarge, RBI characterized the September, 1991 meetings as involving "an insurgent group of [RBI] shareholders". According to RBI, those "insurgent" shareholders elected a "newly appointed" board of directors which terminated the MSA and declared the plan of reorganization "null and void". RBI Opposition at 18. Since four of those five "newly appointed" directors had been directors for years, RBI's characterization of them as "newly appointed" is misleading. RBI has never explained why the actions of RBI's board of directors in September, 1991 can or should be ignored.

shares was not disclosed to the Commission. Indeed, as recently as July, 1999, RBI continued to deny the October, 1991 issuance of shares.^{6/} Not until RBI's Opposition, filed on November 19, 1999, did RBI acknowledge that Partel had become a shareholder in October, 1991.^{7/} And even then RBI made no reference to the other stock which Parker issued in October, 1991. It was only in December, 1999, *after* the filing of Adams's Reply, that RBI produced its stock register which established clearly that Parker had issued more than 360,000 shares of stock in October, 1991. A copy of the stock register was filed by Adams as a Supplement to its Reply to the oppositions to its Motion to Enlarge.^{8/}

16. The stock register demonstrates that, as a result of the October, 1991 issuance of stock, the previously-approved shareholders who had been listed in the August, 1991 316 held less the 50% of RBI's stock. In other words, the October, 1991 issuance effectuated a

^{6/} In a "Reply to Preliminary Motion of Adams Communications Corporation" filed July 29, 1999, RBI flatly stated, *inter alia*, that *in 1992*

Partel and numerous other stockholders were added and the outstanding stock in the company went from 50,000 shares to 419,038 shares, requiring long-form approval of the FCC pursuant to an application on FCC Form 315.

The claim that Partel and numerous other shareholders were not added until *after* Commission approval in 1992 was **ERRONEOUS**. RBI's stock register (which was not produced to Adams until December 2, 1999, *after* the filing of Adams's Reply) conclusively establishes that Partel and the other "numerous" shareholders were actually added in October, 1991, some six months before the "consummation" which RBI reported to the Commission.

^{7/} In so acknowledging, RBI offered no explanation for its express and explicit representation to the Presiding Judge, in July, 1999, that Parker and Partel had held no ownership interest at all in RBI prior to March, 1992.

^{8/} The *MO&O* refers to the stock register as having been "recently discovered". *MO&O* at 5. No basis exists for that characterization. RBI clearly had the register available to it in November, 1999, because RBI included one page -- but only one page -- of the register as an exhibit to its November 19, 1999 Opposition. The mere fact that RBI withheld the rest of the register from Adams until the eve of the hearing does not mean that the stock register was missing at any time; to the contrary, it suggests a premeditated effort by RBI to withhold important, damaging information until the last possible moment.

transfer of control of RBI. The following summary chart demonstrates this.

<u>Name of Shareholder</u>	<u>Percentage Before 316</u>	<u>Interest Held</u>		
		<u>Percentage Proposed in 316</u>	<u>10/15/91 Stock Issuance Shares</u>	<u>Percent</u>
Henry N. Aurandt	36%	18.71%	23,868	6.56% ^{2/}
Robert A. Denby	10%	4.99%	19,922	5.47%
Sergio Proserpi	4%	3.01%	12,003	3.29% ^{2/}
Jack A. Linton and Nancy A. Linton	2%	0.86%	3,424	0.93% ^{2/}
Irvin Cohen	8%	3.02%	12,067	3.31%
Roger N. Longenecker and L. Carole Longenecker	5%	3.86%	15,413	4.23%
Ralph H. Tietbohl	5%	3.68%	14,683	4.03% ^{2/}
Patricia J. Verbinski	5%	4.02%	16,045	4.41%
Robert H. Clymer	4%	1.49%	5,943	1.63%
Larry A. Rotenberg and Allison A. Rotenberg	4%	1.26%	5,039	1.37% ^{2/}
David E. Mann and Barbara W. Mann	3%	2.5%	9,977	2.74%
Joanne V. Davis	3%	0.88%	3,507	0.96%
Albert R. Boscov	2%	0.81%	3,243	0.89%
John R. Bower, Jr. and Jill L. Bower	2%	2.01%	8,014	2.2%
Edward C. Fischer	2%	3.04%	12,121	3.33%
Bernard R. Gerber	2%	0.86%	3,424	0.93% ^{2/}
Catherine Z. Morrow	2%	1.34%	5,333	1.46%
Donald E. Stoudt and Mary Lu Stoudt	1%	0.34%	1,350	0.37%
<u>TOTAL</u>	<u>100%</u>	<u>56.68%</u>		<u>48.11%</u>

17. Confronted with this demonstration, RBI offered no explanation for its failure to report this stock issuance. Instead, it argued that no transfer of control had occurred because, in October, 1991, a 4.8% stock interest was also issued to STV Reading, Inc., a

^{2/} The interests of shareholders Aurandt, Proserpi, Linton, Tietbohl, Rotenberg and Gerber reflected in this chart are aggregate holdings, including shares issued to (a) the named individuals themselves and (b) accounts (*e.g.*, retirement or profit-sharing accounts) controlled by or for the benefit of the individuals.

corporation which, according to RBI, was controlled by Aurandt, a previously-approved shareholder. RBI claimed that if that 4.8% interest were added to the 48.11% aggregate interest issued to previously-approved shareholders, then more than 50% of RBI's newly-issued stock would have been controlled by previously-approved shareholders and no transfer of control would have occurred.

18. RBI's claims on this point were not made in its Opposition to Adams's Motion to Enlarge, but rather in an Opposition to Adams's Motion for Leave to Supplement its Reply. The purpose of Adams's Motion for Leave was simply to include in the record a copy of the RBI stock register, which had not been provided to Adams by RBI until *after* the filing of Adams's Reply. ^{10/} RBI supported its claims with statements from Jack Linton, an RBI principal. But Linton's statements did **NOT** establish the facts alleged by RBI.

19. According to RBI's Opposition, Linton "testified that with the exception of approximately 9.9% of the stock, STV Reading, Inc. was owned by" Aurandt. RBI Opposition at 5. But that's **NOT** what Linton actually said. What he said was:

Harvey Massey, Pavloff and Busby [not-previously-approved parties]. . . had acquired, I think, like 9.9 percent of the stock of STV of Reading. But *there was a dispute whether that was 9.9 OR ALL OF IT. And in my judgment at that time, because I represented Dr. Aurandt and his interest and my loyalties were to him, it was 9.9.*

RBI Opposition, Exhibit C, p. 61 (emphasis added). Thus, Linton did **NOT** claim that Aurandt was the sole, undisputed owner of approximately 90% of STV Reading -- to the contrary, Linton specifically acknowledged that there was a dispute about that, and one side

^{10/} Adams responded to RBI's beyond-the-eleventh-hour tender of new factual arguments, but the Presiding Judge refused to consider Adams's reply pleading. See *MO&O* at 1, n. 1. Since the *MO&O* is based in significant part on RBI's late factual claims, the refusal to consider Adams's limited and prompt response to those claims is remarkable and objectionable, and provides further justification for immediate appeal of the *MO&O*.

of the dispute claimed that Aurandt owned *NONE* of STV Reading.

20. In a separate declaration, Linton was far from unequivocal about who owned what. All he said was that

the [STV Reading] stock register indicates that as of October 15, 1991, Henry N. Aurandt and Helen K. Aurandt held a 90.66% ownership interest in STV Reading, Inc.

RBI Opposition to Adams's Motion for Leave to File Supplement, Exhibit B. Note that Linton's extremely narrow statement made no mention of the dispute over ownership of STV Reading which Linton himself acknowledged in his deposition.

21. Linton's reluctance to offer more than his unusually cautious and narrow statement is understandable in light of the fact that RBI's own documents indicate that Parker, not Aurandt, was the possessor of control of STV Reading in October, 1991. After issuing the RBI stock on October 15, 1991, Parker called a meeting of all RBI shareholders for October 30, 1991 (described in greater detail below). The minutes of that meeting indicate that Aurandt specifically opposed the meeting. *See* October 30, 1991 shareholder meeting minutes, p. 1 (included as Exhibit V to RBI's Opposition to Adams's Motion to Enlarge). But immediately above that portion of the minutes, the minutes indicate that STV Reading, supposedly an RBI shareholder thanks to Parker's October, 1991 stock issuance, was an active participant in the meeting, with its RBI stock interest voted by Parker, who was identified as President of STV Reading. *Id.* Similarly, Parker held himself out as President of STV Reading and voted its stock at the February 4, 1992 RBI shareholders' meeting, a meeting to which Aurandt objected and which he refused to attend. *See* Minutes of February 4, 1992 RBI shareholders' meeting, at, *e.g.*, 32 (included as Exhibit X to RBI's Opposition to Adams's Motion to Enlarge).

22. RBI would thus have the Presiding Judge believe that Aurandt, who expressly opposed the convening of the October 30, 1991 and February 4, 1992 meetings and who chose not to participate in those meetings (other than to register his opposition), had nevertheless authorized Parker to vote at those meetings the shares of STV Reading, of which (according to RBI) Aurandt owned more than 90%. That makes no sense. If Aurandt really controlled STV Reading, why would he allow Parker to appear as "president" and to vote STV Reading's stock at meetings which Aurandt himself chose to oppose and to boycott? ^{11/}

23. But putting aside the question of who controlled STV Reading and assuming, *arguendo*, that the October 15, 1991, stock issuance did not constitute a transfer of control, why then did RBI not advise the Commission of the stock issuance? Why did RBI choose instead to repeatedly advise the Commission that no consummation of any transactions had occurred or would occur until Commission approval of the November, 1991, 315? The October, 1991, stock transactions are, with negligible exception, identical to the transactions proposed in the November, 1991, 315. RBI repeatedly advised the Commission, in connection with that application, that RBI knew that it needed prior Commission approval before it could effectuate those transactions. But RBI had *already* effectuated those transactions. RBI has painted itself into a corner.

^{11/} Notably absent from RBI's Opposition were copies of the STV Reading stock register itself, or any other corporate records of STV Reading which might reveal how Parker happened to be voting STV Reading's stock as its President, or any explanation of the nature of the dispute alluded to by Linton.

F. The October 30, 1991, Meetings

24. Having issued RBI stock in October, 1991, Parker called a meeting of the owners of the newly-issued stock. That meeting was held on October 30, 1991. The minutes of the meeting reveal that previously-approved shareholders Aurandt and Linton expressly objected to the holding of the meeting and declined to participate. Notwithstanding the objections of those previously-approved shareholders, Parker conducted the meeting, removed the previous board of directors, nominated a new slate of directors, all of whom were elected, and generally held himself out as the person in charge.

25. Immediately after the shareholders meeting, the newly-elected directors met. RBI has thus far failed to produce for Adams copies of the minutes of that meeting, although Adams did review those minutes when provided the opportunity to do so (although that review was initially limited only to visual review, coupled with minimal note-taking not to include quotations from the minutes being reviewed). The new directors immediately began to exercise control over the corporation, removing all former officers including Linton and electing Parker, in effect, the sole corporate officer.

G. The November 13, 1991, 315 application

26. Having unilaterally, and without prior Commission approval, effectuated a transfer of control, Parker was then faced with the problem of how, *post hoc*, to try to legitimize his actions. Two weeks after his October 30, 1991, coup, Parker caused a long-form Form 315 transfer of control application ("November, 1991, 315") to be filed. All three portions, transferor, licensee, and transferee, were signed by Parker. Nowhere in the application was there even a hint that RBI's shareholders, officers and directors had undergone any change at all since August, 1991. To the contrary, the November, 1991, 315

specifically advised the Commission that the ownership changes which had been proposed (and approved) in the August, 1991 316 had not been consummated.

27. The only "explanation" for the filing of the November, 1991, 315 appeared in the second paragraph of Exhibit 2, which read in relevant part as follows:

. . . Because the stock ownership of [RBI], the proposed transferee, will be different from the stock ownership of [RBI] prior to bankruptcy, the instant application is being filed on FCC Form 315, the Long Form application. ^{*/}

^{*/} Please note that on August 14, 1991, [RBI], as debtor-in-possession, filed an application on FCC Form 316 requesting the transfer of control of WTVE(TV) to [RBI] (FCC File No. BTTCT-910814KE). The Commission granted the application on August 27, 1991. Because of the circumstances surrounding the stock ownership of [RBI], as explained in Exhibit 4 to the instant application, the parties did not consummate the transaction.

See RBI Opposition, Exhibit Q. The Exhibit 4 referred to in the footnote to Exhibit 2 read, in its entirety, as follows:

Four of the proposed stockholders of [RBI], Harvey L. Massey, Paul Pavloff, Stella Pavloff and Alfred W. Busby, have sued Dr. Henry Aurandt, a present and proposed stockholder of [RBI], in U.S. District Court for the Eastern District of Pennsylvania. On July 31, 1991, a judgment was entered in favor of Mr. Massey, Mr. Pavloff, Ms. Pavloff and Mr. Busby against Dr. Aurandt, and the court garnished Dr. Aurandt's [RBI] stock to satisfy the judgment. If Dr. Aurandt's [RBI] stock is used to pay the judgment, his stock, which will represent 13.98% of the outstanding stock if the instant application is approved, will be distributed to the four stockholders referenced above.

Id. These "explanation[s]" failed to mention that Massey, Busby and the Pavloffs had *already* been issued stock by Parker in October, 1991, and had already voted as RBI shareholders (through proxies given to Parker) at the October 30, 1991, meeting. See RBI Opposition to Adams's Motion to Enlarge, Exhibit V, p. 1.

28. In fact, the garnishment mentioned in the exhibit appears to have been, at

most, an after-the-fact justification for the filing of the Long Form application, since the stock which Parker actually distributed in October, 1991, independent of the garnishment matter, effectuated a transfer of control. Reference to the garnishment appears to have been nothing more than a stalking horse, designed to create the impression that some intervening circumstance had necessitated the filing of a Long Form application. ^{12/}

29. By February, 1992, the November, 1991 315 had still not been granted. On February 7, 1992, RBI filed an amendment to the application. In her transmittal letter, RBI's counsel offered further "explanation" as to why RBI had filed a long-form Form 315 application:

In addition, if the foregoing application is granted, the stock ownership of [RBI] will be different from the stock ownership of [RBI] prior to bankruptcy. As referenced in [RBI]'s application, in order to adequately finance the corporation, [RBI] will issue additional shares of stock to reflect the addition of several new shareholders. Consequently, the above-referenced application was filed on FCC Form 315, the Long Form application.

RBI Opposition, Exhibit S. But the application as originally filed (and as quoted above) claimed that the use of a Long Form application supposedly arose from the garnishment, not

^{12/} In the *MO&O* the Presiding Judge asserts, concerning this garnishment matter, that an "unforeseen event occurred" and "shares of [RBI] that were owned by a shareholder were subjected to a court judgment and [RBI] was required to reissue those shares of stock to the judgment creditors." *MO&O* at 3, ¶5. That is not accurate.

First, the event was not at all "unforeseen". According to the minutes of a July 31, 1991 RBI directors' meeting, Parker was well aware that questions existed concerning the "status" of Aurandt's stock and that that status was "unresolved". See Attachment D.

Second, the October, 1991 notice of garnishment at most notified RBI that an attachment had been issued in favor of the judgment creditors and that the shares to which Aurandt would be entitled under the plan of reorganization *might* ultimately be utilized to satisfy the judgment. See Attachment E. That notice thus left the status of Aurandt's stock in the same "unresolved" status that it had been in in July, 1991. The garnishment notice imposed no affirmative obligation on RBI; rather, it simply put RBI on notice of the garnishment and enjoined RBI from disposing of the shares in question. The very limited effect of the garnishment notice is demonstrated by the fact that in April, 1992 -- six months after the garnishment notice -- RBI reported to the Commission that the contested bloc of stock *still* had not been issued.

from any need to "adequately finance the corporation". This shift in supposed justifications suggests that the garnishment really was not the reason that a long form application was utilized. In any event, the February 7, 1992, transmittal letter underscores RBI's awareness of the need to obtain Commission approval *before* any transfer of control, and, once more, it illustrates RBI's efforts to snooker the Commission into believing that no such transfer had already occurred or would occur prior to such approval.

H. The February, 1992, shareholder meeting

30. On February 4, 1992, Parker convened a meeting of RBI's October, 1991, vintage shareholders. *See* RBI Opposition, Exhibit Y. Objections to that meeting were again interposed by counsel on behalf of original RBI principals, but those objections were brushed aside by Parker, who presided over the meeting. *Id.* During the meeting, the directors who had been "elected" at the October 30, 1991, meeting (upon Parker's nomination) were "re-elected". *Id.* This meeting occurred three days before RBI's letter (described in Paragraph 29, above) to the Commission in which RBI created the misimpression that the ownership and governance of RBI were still as they had been in August, 1991.

I. The consummation letter and the April, 1992 ownership report

31. On April 10, 1992, counsel for RBI filed a letter, referencing the November, 1991, 315, which notified the Commission that the transfer of control "was consummated on March 12, 1992." RBI Opposition, Exhibit U.

32. On April 16, 1992, RBI filed an Ownership Report (FCC Form 323) to report the consummation of the transfer of control authorized with the grant of the November, 1991 315. That Ownership Report was signed by Parker. It contained no reference to the Partel MSA. According to the Report, the directors of RBI were still Aurandt, Linton,

Clymer, Fischer and Parker, and Linton was still the Secretary, notwithstanding the October 30, 1991 and February 4, 1992 meetings -- over which Parker had presided. The stock distribution described in the table of shareholders in the Ownership Report corresponds, with only very minor exceptions, to the stock distribution which resulted from Parker's October 15, 1991, issuance of Share Certificate Nos. 1A through 50A. *See* Paragraphs 15-16, above.

J. Events subsequent to April, 1992

33. In April, 1993, RBI filed a letter signed by Parker certifying that the information set forth in the April 16, 1992, Ownership Report remained accurate, even though the Parker-led board, first "elected" in October, 1991, continued to control the corporation and that fact had never been reported to the Commission.

34. In March, 1994, in connection with its application for renewal of license, RBI filed an updated Ownership Report in which it identified its directors as Parker, Clymer, McCracken, Rose, Cohen, *i.e.*, the directors "elected" in October, 1991, plus two new directors.

DISCUSSION

35. It is beyond any argument that the Commission demands to know who owns and controls, and who is in a contractual position to own and control, its broadcast licensees. Licensees are required to report such information routinely and timely. *See* Sections 73.3613, 73.3615. And when a transaction will cause more than 50% of the stock of a corporate licensee to be held by parties who have not previously been approved by the Commission, the Commission and the Congress (*see* 47 U.S.C. §310) require that such

transactions be approved *prior to* their consummation.

36. The evidence accumulated thus far establishes that, while Parker through the Partel MSA was entitled to own a significant share of RBI beginning as early as August, 1989, and while he was, through the MSA, in *de facto* control of Station WTVE(TV) from August, 1989 on, neither his presence at the station, his official role(s) there, nor his contractual right to obtain stock was reported to the Commission for years. Why? RBI has offered no explanation for this failure to report.

37. Multiple possible explanations exist. For example, the MSA may not have been disclosed because Parker and/or RBI feared that the MSA would be deemed objectionable, since it accorded Parker/Partel *de facto* control because it gave Parker/Partel control over employment decisions and a veto over all corporate expenses decisions.

38. Parker's own role at the station may have been withheld because such disclosure might have raised questions about Parker's qualifications -- again, Parker had twice been harshly criticized, if not affirmatively disqualified from broadcast ownership, for "transpicuous fraud" and "deceit" less than 12 months before his arrival at RBI (*see Mt. Baker and Religious Broadcasting*), and he did not deign to mention those problems to RBI or the Bankruptcy Court. ^{13/}

39. Whatever the explanation, RBI did not advise the Commission of either

^{13/} By not disclosing his involvement with RBI during 1989-1991, Parker also avoided mentioning *Mt. Baker and Religious Broadcasting* to the Commission. When, in the November, 1991, 315, Parker finally did mention those two proceedings, he described them in a manner so misleading as to warrant the addition of an issue in this case.

Parker's official position(s) at the station or the existence of the MSA for years.^{14/} And RBI has offered no explanation for its failure to do so.

40. Let us now focus on the events of August-November, 1991.

41. In August, RBI filed the August, 1991, 316, in which RBI expressly represented that it would remove itself from bankruptcy with previously-approved shareholders still holding more than 50% of RBI's shares. The following month, the RBI board of directors terminated the MSA and nullified the plan of reorganization. As a result, Parker faced the loss of his anticipated ability to acquire a formal, *de jure* dominant ownership position in RBI through the terminated MSA. Parker peremptorily took it upon himself to issue more than 360,000 shares of RBI stock, an action which resulted in previously-approved shareholders holding less than 50% of the stock. In other words, in October, 1991, Parker single-handedly effectuated a *de jure* transfer of control.^{15/}

42. This shift in control is clearly apparent in the minutes of the October 30, 1991, shareholders' meeting, which was convened and conducted by Parker over the objections of previously-approved RBI shareholders. Parker called that meeting, chaired that

^{14/} The *MO&O* suggests that the MSA may not have been disclosed to the Commission because, prior to approval of the MSA by the Bankruptcy Court, the MSA may not have been a binding obligation on RBI. But as noted above, the MSA was approved by the Court in August, 1990, years before the MSA was disclosed to the Commission. Further, the Commission's reporting rules are *not* limited only to agreements which are absolutely binding to the nth degree. Section 73.3613(b) requires the submission of "contracts, instruments or documents relating to the present or future ownership or control of the licensee." The MSA fit into that broad category of reportable materials whether or not it was approved by the Bankruptcy Court.

^{15/} RBI effectively concedes that, if the STV Reading interest in RBI is not deemed to have been controlled by Aurandt, then a *de jure* transfer of control occurred. While the *MO&O* accepts RBI's facile claims concerning the locus of control of STV Reading, the available evidence does not support those claims, as Adams argued in the Reply which the Presiding Judge declined to consider. See Paragraphs 17-22, above.

meeting, removed the previous board of directors at that meeting, and nominated and caused to be elected a replacement slate of directors at that meeting. Those directors then removed all the previous corporate officers and elected Parker as, in effect, the sole corporate officer. The coup was complete. ^{16/}

43. Now, having accomplished a significant change in ownership, officers and directors, Parker was faced with an obvious problem at the Commission. Since the changes he had effectuated needed prior Commission approval, and since he had not obtained such approval, something had to be done.

44. Two weeks *after* the October 30, 1991 meeting, Parker caused the November, 1991, 315 to be filed. That application purported to seek approval for the *future* issuance of stock to various parties, even though those parties had *already been issued* that stock two weeks before. The application did not disclose that the stock had already been issued. The application did not disclose that the newly-issued stock had already been voted to elect a new set of officers and directors. The new officers and directors were not identified; instead, the application listed as proposed officers and directors the individuals who had been removed by Parker at the October 30, 1991 meeting.

45. The November, 1991, 315 was an effort to back-fill, to obtain some after-the-

^{16/} In its Opposition to Adams's Motion to Enlarge, RBI sought to downplay this course of events as a mere intra-corporate struggle for control immune from Commission consideration. The Presiding Judge appears to have agreed with that notion, referring to the October, 1991 events as a mere "dust-up", *MO&O* at 5. That conclusion *might* be valid if both of the parties vying for control of RBI had been previously-approved parties. But here, Parker, not a previously-approved party, was seeking to oust Aurandt *et al.*, who were previously-approved parties. The Commission is *statutorily obligated* to consider and approve transfers of control *before* they occur. 47 U.S.C. §310. Sensitive to the need to accommodate regulatory processes to the realities of the business world, the Commission has adopted a procedure to be used when intra-corporate struggles lead to proxy battles. *In re Tender Offers and Proxy Contests*, 59 RR2d 1536 (1986). RBI did not invoke that procedure.

fact approval for the transactions which Parker had effectuated in October, 1991.

46. This is amply demonstrated by the fact that, while RBI reported to the Commission in April, 1992, that the transfer of control had been consummated on March 12, 1992, no such transfer is reflected in RBI's stock register. The register shows the October 15, 1991 issuance of stock in Certificates 1A through 50A. The next entry -- Certificate 51A -- shows the original issue of certain shares in February, 1993. All other entries describe transactions after that date.

47. In other words, despite RBI's notification of consummation as of March 12, 1992, **NOTHING IN FACT HAPPENED ON MARCH 12, 1992**, relative to issuance of stock. That is because all of the stock had already been issued in October, 1991, weeks before the November, 1991, 315 was even filed, and months before the Commission approved that application.^{17/} And as demonstrated on the chart on page 8 above, the stock that was issued on October 15, 1991, effectuated an unauthorized *de jure* transfer of control.

48. After the inaccurate report of the March, 1992, "consummation", RBI filed an Ownership Report. While the distribution of shares reflected in that Report conforms to the October, 1991, distribution of shares, the Report did not disclose that the shares had been issued long before Commission approval. Moreover, the Report did not accurately reflect the names of the directors who had been elected at the October, 1991 meeting and re-elected at a February, 1992 meeting. Instead, the April, 1992 Ownership Report indicated that the officers and directors who had been in place prior to October, 1991 were still in place.

49. RBI has ascribed the incorrect listing of officers and directors in the

^{17/} The Presiding Judge's apparent acceptance of RBI's factual claims concerning some "consummation" on March 12, 1992 -- see *MO&O* at 3, ¶5 -- is thus contrary to the documentary record already compiled.

49. RBI has ascribed the incorrect listing of officers and directors in the November, 1991 315 and subsequent Ownership Reports to inadvertence. However, RBI has not explained how that "inadvertence" could possibly have occurred, given the fact that Parker himself had nominated all of the new directors and had presided over their election, and Parker was himself in effect the only corporate officer following the October, 1991 meeting, and Parker himself signed all portions of the November, 1991 315, and the 1992 Ownership Report, and Parker was experienced in Commission practices. How could he *not* have noticed that individuals whom he had removed and replaced were listed as still retaining their positions?

50. The totality of the available evidence leads inexorably to the conclusion that the November, 1991, 315, the subsequent "consummation" notice and April, 1992, Ownership Report were all an elaborate charade intended to mask the fact that the stock transactions described in those materials had already been effectuated before Commission approval was even sought. Clearly, an unauthorized transfer of control occurred, and RBI then engaged in an elaborate, misrepresentative scheme to keep that fact from the Commission. That scheme was designed, if successful, to give RBI the ability to point to the grant of the November, 1991, 315 and the March 12, 1992, "consummation" pursuant thereto and to claim that any action that occurred before March 12, 1992, was irrelevant.

51. RBI attempted precisely this in this very proceeding. In addressing the threshold question of the time frame relevant to RBI's claim of renewal expectancy, RBI initially argued that the license period should be deemed to have started on March 12, 1992,

the date of RBI's supposed consummation.^{18/} In a July 29, 1999 pleading responding to Adams's contrary position, RBI flatly stated, *inter alia*, that Parker

had no direct or indirect ownership interest in [RBI] *before* the conclusion of the company's reorganization in **1992**.

* * *

Parker only became a stockholder, with an equity interest (through Partel) of approximately 30%, after the company emerged from Chapter 11 ***in 1992***. ***At that time, Partel and numerous other stockholders were added*** and the outstanding stock in the company went from 50,000 shares to 419,038 shares, requiring long-form approval of the FCC pursuant to an application on FCC Form 315.^{19/}

^{19/} See 47 C.F.R. §73.3540. Had there not been a substantial change in ownership, the transfer of control application to emerge from Chapter 11 would have been a *pro forma* application on FCC Form 316.

RBI Reply at 3-4 (emphasis added). RBI was plainly using the November, 1991, 315 and supposed consummation pursuant thereto as a barrier beyond which no inquiry should be permitted. But the basis for that claim -- *i.e.*, that some change of ownership had actually occurred on March 12, 1992 -- was completely false.

CONCLUSION

52. Seldom is an unauthorized transfer of control so readily capable of documentation through the subject licensee's own records as is the case here. RBI's stock

^{18/} RBI told the Presiding Judge that

when [RBI] emerged from bankruptcy, there was a greater than 50% change in ownership, requiring long-form approval of a Form 315 application. . . . [T]his change of control starts the clock on March 12, 1992, the date [RBI] completed its transfer of control.

RBI Prehearing Brief on Scope of Issues (filed July 22, 1999), at 8.